

Council Communication

Department: Legal	Ordinance No. Resolution No. <u>5965</u>	First Reading <u>1/14/08</u> Second Reading _____ Third Reading _____
Applicant.		
Subject/Title		
The Council Bluffs Airport Authority currently has a nine member board whose terms all expire at the same time. The Mayor is proposing that a stagger be established for the expiration of board member's terms. An ordinance that accomplishes this has been prepared.		
BACKGROUND		
When the Airport Authority was initially established, there was no stagger established in the appointments. It is generally seen as beneficial to have a stagger in the terms of board members, so that all institutional knowledge is not lost at one time.		
Recommendation		
It is the recommendation of the Mayor and the City Attorney that the ordinance before the Council addressing these matters be approved.		

Richard Wade

Department Head Signature



Mayor Signature

ORDINANCE NO. 5965

AN ORDINANCE to amend Chapter 1.68 "Council Bluffs Airport Authority" of the 2005 Municipal Code of Council Bluffs, Iowa, by repealing Section 1.68.020 "Board" and enacting a new Section 1.68.020 "Board", to establish a stagger in the member's terms.

BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

SECTION 1. That Chapter 1.68 "Council Bluffs Airport Authority" of the 2005 Municipal Code of Council Bluffs, Iowa, be and the same is hereby amended by repealing Section 1.68.020 "Board" and enacting a new Section 1.68.020 "Board", to read as follows:

"**1.68.020 Board.** (a) The Council Bluffs airport authority board shall be composed of nine members who shall be appointed by the mayor, with the concurrence of a majority of the city council. They shall be eligible electors of Pottawattamie County.

(b) The board shall be the governing body of the authority, exercising all the rights, duties and powers conferred by this chapter on the authority.

(1) ~~Board members shall serve for terms of four years.~~ After the passage of this ordinance, nine board members shall be appointed. Five shall be appointed for three year terms, and four shall be appointed for one year terms. After these appointments, all future appointments shall be for a term of four years.

(2) Each member will qualify by taking an oath to faithfully perform the duties of office.

(3) The board shall within ten (10) days after its appointment, organize by electing a chairperson, a secretary, and a treasurer, each for a term of two years.

(4) Board members and officers shall serve until their successors are duly elected and qualified.

(5) A salary shall not be paid to a board member; however, each board member shall be reimbursed for actual expenses incurred in the performance of the member's duties.

(6) All actions by the authority require an affirmative vote of a majority of the board."

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed. This is Ordinance No. 5452, Section 1 (part) 1999.

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are

severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED
AND
APPROVED _____

THOMAS P. HANAFAN Mayor

Attest:

JUDITH RIDGELEY City Clerk

First Consideration: January 14, 2008

Second Consideration: _____

Public Hearing: _____

Third Consideration: _____

Council Communication

Department: Legal	Ordinance No. <u>5966</u>	First Reading <u>1/14/08</u>
Case/Project No.	Resolution No. _____	Second Reading _____
Applicant.		Third Reading _____
Subject/Title		
<p>As part of a development agreement between the City Of Council Bluffs and MidAmerican Energy Company (MAE), the Mayor and his staff agreed to support an amendment to the text of the city's noise ordinance. An ordinance to implement the proposed change has been prepared and placed on your agenda.</p>		
BACKGROUND		
<p>During the negotiation of a Development Agreement with MAE, which was prompted by the city's desire to annex land owned by MAE, the city started receiving noise complaints targeting MAE as the problem. Since MAE has made a very significant investment in this community with the expansion of its electric generation facility, this of course caused some concern. In response to the complaints, the city was never able to detect a violation of the ordinance by MAE, but nevertheless agreed to review certain alterations to its noise control ordinance. The result is the ordinance that is on your agenda. This new language has been reviewed, and is supported by the City's Board of Health.</p>		
Recommendation		
<p>It is the recommendation of the Mayor, his staff, and the Council Bluffs Board of Health that this ordinance be approved.</p>		

Richard Wade

Department Head Signature

Mayor Signature

ORDINANCE NO. 5966

AN ORDINANCE to amend Chapter 4.50 “Noise Control” of the 2005 Municipal Code of Council Bluffs, Iowa, by repealing Section 4.50.080 “Sound levels by receiving land use” and enacting a new Section 4.50.080 “Sound levels by receiving land use”.

BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

SECTION 1. That Chapter 4.50 “Noise Control” of the 2005 Municipal Code of Council Bluffs, Iowa, be and the same is hereby amended by repealing Section 4.50.080 “Sound levels by receiving land use” and enacting a new Section 4.50.080 “Sound levels by receiving land use”, to read as follows:

“4.50.080 Sound levels by receiving land use.

8.1 Maximum Permissible Sound Levels by Receiving Land Use. It is unlawful for any person to operate or cause to be operated on private property any source of sound in such a manner as to create a sound level which exceeds the limits set forth for the receiving land use category in Table 1 as follows, unless otherwise provided in this chapter, when measured at or within the property boundary of the receiving land use; provided, however, that no measurement of sound levels shall be made less than fifteen (15) meters (fifty (50) feet), or equivalent (Section 4.50.110, Noise Measurement Procedures), from such source of sound.

Table 1
Sound Levels By Receiving Land Use

Sound Emitting Land-Use Category	Sound Receiving Land-Use Category	Sound Level Time of Day	Sound Level Limit, dBA Leq(1)
Residential	Residential	Daytime	55
		Nighttime	45
Business/Commercial	Residential	Daytime	60
		Nighttime	50
Industrial	Residential	Daytime	65
		Nighttime	55
Residential	Business/Commercial	Anytime	60
Business/Commercial	Business/Commercial	Anytime	65
Industrial	Business/Commercial	Anytime	65
Industrial	Industrial	Anytime	75

8.2 Correction for Character of Sound. For any source of sound which emits a pure tone or impulsive sound the Leq(1) sound level limits set forth in subsection (8.1) of this section, shall be reduced by five dBA for any pure tone or impulsive sound. Special instrumentation and measurement techniques are required if a pure tone or impulsive sound is less than five dBA above the background noise level.

8.3 Exemptions. The provisions of this section shall not apply to:

(a) Any of the subsections in Section 4.50.060, except as noted in Section 4.50.060;

(b) Interstate railway locomotives and cars; and

(c) Undeveloped land, farm land and nonstationary farming equipment and all normal agricultural activities.

(d) Notwithstanding Table 1 above, an Electric Utility Generation Facility, as defined in Chapter 15.03 of the Council Bluffs Municipal Code, may generate a decibel reading not to exceed 65 dBA at anytime (day or night) to a receiving land use that is Residential. The level of sound for an Electric Utility Generation Facility shall be measured by using an L90 measurement technique, and for a one hour average. Sound from sources other than the Electric Utility Generation Facility, including but not limited to streets, highways, seasonal insects and other uses, shall not be counted against the ordinance limits.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed. This is Ordinance No. 4252 § 1 (part), 1978).

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED

AND

APPROVED _____

THOMAS P. HANAFAN Mayor

Attest:

JUDITH RIDGELEY City Clerk

First Consideration: January 14, 2008

Second Consideration: _____

Public Hearing: _____

Third Consideration: _____

Council Communication

Department: Legal Case/Project No. Applicant.	Ordinance No. Resolution No. <u>5967</u>	First Reading <u>01/14/08</u> Second Reading Third Reading _____
Subject/Title		
<p>Ordinance amending Chapter 16.04 "Historic Preservation Commission", to allow for its members to reside anywhere in Pottawattamie County if they own property within a locally-designated historical district within the city of Council Bluffs.</p>		
BACKGROUND		
<p>Currently, Section 16.04.040 of the Council Bluffs Municipal Code requires that all appointments to the Historic Preservation Commission be residents of the City. The Commission recently endorsed an amendment to this requirement that would allow a resident of Pottawattamie County to be a Commission member if they own property that is located within a locally-designated historical district.</p>		
Recommendation		
<p>It is the recommendation of the Historic Preservation Commission that Section 16.04.040 be amended to allow this change in qualifications.</p>		

Richard Wade

Department Head Signature

Mayor Signature

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ORDINANCE NO. 5967

AN ORDINANCE to amend Chapter 16.04 "Historic Preservation Commission" of the 2005 Municipal Code of Council Bluffs, Iowa, by amending Section 16.04.040 "Appointments".

B E I T O R D A I N E D

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA:

SECTION 1. That Chapter 16.04 "Historic Preservation Commission" of the 2005 Municipal Code of Council Bluffs, Iowa, be and the same is hereby amended by repealing Section 16.04.040 "Appointments" and enacting a new Section 16.04.040

"Appointments", to read as follows:

"16.04.040 Appointments. All appointments to the commission shall be made by the mayor, with the approval of the city council as follows:

- (1) The seven members shall be appointed from the duly registered electors residing within the city of Council Bluffs, or registered electors residing in Pottawattamie County that own property within a locally-designated historical district within the city of Council Bluffs.
- (2) In making appointments to the commission the mayor shall take the following factors into consideration: historical expertise, expertise in historical architectural styles, expertise in land economics, expertise in engineering, expertise in architecture, expertise in preservation, expertise in law, expertise in real estate, expertise in building restoration, membership in historical society, membership in preservation group, duly licensed in architecture or residence within a historical district, or ownership of property in a historical district.
- (3) At least one member of the commission shall be a person who does not necessarily possess any of the factors as set forth in subsection (2) of this section."

SECTION 2. REPEALER. All ordinances or parts or ordinances in conflict with the provisions of this ordinance are hereby repealed. These are Ord. 5531 § 5, 2000 and Ord. 5148 § 1 (part), 1993.

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage, approval and publication, as by law provided.

PASSED
AND
APPROVED _____

THOMAS P. HANAFAN Mayor

Attest: _____
JUDITH RIDGELEY City Clerk

First Consideration: January 14, 2008

Second Consideration: _____


Public Hearing: _____

Third Consideration: _____

CITY OF COUNCIL BLUFFS

INTER-OFFICE MEMO

DATE: December 13, 2007

TO: Thomas P. Hanafan, Mayor 

FROM: Linda Andersen, Acting Finance Director

RE: Resolution for authorization for bank transactions

As a result of personnel changes within the Finance Department, it is necessary to authorize certain city officials to conduct financial transactions on behalf of the City.

This action does require Council approval and a resolution effectuating these changes has been prepared. It would be my recommendation that the resolution be adopted.

RESOLUTION

NO. 07-346

A RESOLUTION authorizing city officials to endorse checks, notes, drafts, bills of exchange, and acceptances on behalf of the City of Council Bluffs in connection with its accounts at Peoples National Bank, Midstates Bank, US Bank, Liberty Bank and Council Bluffs Savings Bank.

Whereas, this shall be in effect as long as the City has monies in accounts with Peoples National Bank, Midstates Bank, US Bank, Liberty Bank and Council Bluffs Savings Bank, and

Whereas, it is in the best interests of the City of Council Bluffs to designate specific individuals who shall be authorized to withdraw funds from the city accounts at Peoples National Bank, Midstates Bank, US Bank, Liberty Bank, and Council Bluffs Savings Bank, and

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

That Peoples National Bank, Midstates Bank, US Bank, Liberty Bank, and Council Bluffs Savings Bank are designated as depositories for the City of Council Bluffs, Iowa, and that the funds of the city deposited in said bank(s) shall be subject to withdrawal upon check, notes, drafts, bills of exchange, acceptances, undertakings or other orders for the payment of money when signed on behalf of the city by Thomas P. Hanafan, as Mayor and Linda J. Andersen, as Acting Director of Finance jointly; and

BE IT FURTHER RESOLVED

That in addition to the above authorized officials, Debra J. Miller as City Treasurer, or Brenda Krivanek, as Account Clerk II, shall be authorized to make telephone transactions for investment drafts, change orders, and transfer of funds; and

BE IT FURTHER RESOLVED

That the following are the genuine signatures of the above identified officials:

THOMAS P. HANAFAN MAYOR

LINDA J. ANDERSEN ACTING DIRECTOR
OF FINANCE

DEBRA J. MILLER CITY TREASURER

BRENDA KRIVANEK ACCOUNT CLERK II

ADOPTED
AND
APPROVED

January 14, 2008

THOMAS P. HANAFAN

MAYOR

ATTEST:

JUDITH H. RIDGELEY

CITY CLERK

Council Communication

Department: Parks, Recreation and Public Property Case/Project No. Applicant: Ronald Hopp	Ordinance No. Resolution No. <u>07-458</u>	Date: <u>December 10, 2007</u>
Subject/Title		
Council consideration of a resolution authorizing the Mayor to enter into an extension and addendum to the agreement with Prine, L.L.C., for concessionaire services for the Dodge Riverside Golf Club and an agreement with Prine, L.L.C. to provide concessionaire services for the Council Bluffs Recreation Complex.		
Background/Discussion		
<p>The City of Council Bluffs entered into a contract with Prine, L.L.C., i.e., the Riverside Grille, to provide concessionaire services at the Dodge Riverside Golf Club. The City Council approved the contract at their September 24, 2001 meeting. The terms of the agreement included a clause to review the terms upon request since this was a new venture for the city as well as Prine, L.L.C. The terms of the agreement and review clause as well as the compensation schedule was as follows:</p> <p>TERM OF AGREEMENT: This Agreement shall be for <u>six years beginning January 1, 2002 and ending December 31, 2007.</u> The City of Council Bluffs Parks, Recreation and Public Property Department also retains the option of providing these services in-house in the event of cancellation or expiration of this Agreement. <u>If at any time during the tenure of this agreement either party wishes to renegotiate any of the terms, they must request in writing the nature of the request and reasons for the renegotiation. There is no responsibility for either party to agree to a renegotiation, however, since this venture is new to both parties, and serious hardships may occur, there resides a mutual understanding to accommodate.</u></p> <p>COMPENSATION AND TIME OF PAYMENT: Contractor shall pay to the City, as a contract fee, a percentage of all Gross Receipts from any activities under this Agreement in the following amount <u>10% for the first year, 10% for the second year and 12% for the third year; 12% for the fourth year; 14% for the fifth year; and 14% for the sixth year. In addition, the contractor agrees to pay to the City 50 % of all rental revenues relative to the rental of the facility.</u></p> <p>Prine, L.L.C. requested to have a meeting to review the terms of the agreement in the fall of 2003. Terry Mauer, Director of Finance and Personnel, Dick Wade, City Attorney, and myself met with the Prines to hear about their concerns. They presented some financial information demonstrating that they have been successful in their operations, yet they are still suffering increased debt. We agreed to have a third party CPA review their books at their cost, and to make some comparisons to industry averages. This third party reviewer determined that the industry average for this type of operation is between 4% and 7.1% and did agree that their debt has been increasing and their ability to make money appears to have been and would continue to be difficult under the current terms.</p> <p>Therefore, Terry Mauer, Dick Wade and I, having met with the Prines on several occasions, made the following amendment recommendations, and it received City Council concurrence at that time.</p>		

- ◆ The percentage of gross sales that the city of Council Bluffs will receive from Prine, L.L.C. for 2004 and subsequent years will be 6% for the first \$500,000 in gross revenue, with an additional 1% for each additional \$250,000 of gross revenues.

Since the original 6 year contract is coming to an end, Dick Wade and I have met with the Prines on several occasions to discuss terms of a possible extension. During the first two years of the contract when it was at 10% and before it was adjusted to 6%, the difference would have been \$61,199 if it had started at 6%. This is almost identical to the amount currently indebted to the city, and the amount they have been struggling to overcome. Therefore, we have suggested that we reduce the terms to a manageable accrual rate of 2.5% to allow them to catch up on past obligations to the city, and then reevaluate after two years of the suggested four year agreement.

In addition to extending the agreement at the Dodge Riverside Golf Club, we are suggesting a four year agreement at the Council Bluffs Recreation Complex at 10% per year.

There is no doubt that the relationship with Prine, L.L.C. and the Riverside Grille has been positive. Our ability to attract tournaments and leagues because of the food service offerings has never been better. In addition to the discussion on terms, we have also discussed some operational changes in an effort to enhance sales and increase revenues. It is quite possible that the cost of a transition and subsequent replacement with a different concessionaire may result in even greater loss in revenue than if we were to make adjustments to help accommodate the current concessionaire. When we originally requested proposals, we sent out over 600 RFP's and received two viable proposals.

Alternatives

A resolution has been prepared authorizing the Mayor to execute an agreement with Prine, L.L.C. to provide concessionaire services for the Dodge Riverside Golf Club and the Council Bluffs Recreation Complex Project. Alternatives include passing the resolution to execute the agreements, or not passing the resolution to execute the agreements and the Director of Parks, Recreation and Public Property will seek other food service providers.

Department Head Signature

Mayor Signature

STUART TINLEY LAW FIRM LLP

QWEST BUILDING

310 W. KANSVILLE BOULEVARD

SECOND FLOOR

P.O. BOX 398

COUNCIL BLUFFS, IOWA 51502-0398

TELEPHONE (712) 322-4033

FAX (712) 322-6243

JAMES E. THORN
OF COUNSEL

WILLIAM R. HUGHES, JR.*
GARY R. FAUST
KRISTOPHER K. MADSEN*
RICK D. CROWL*
ROBERT M. LIVINGSTON*

RYAN M. SEWELL*

ROBERT M. STUART
(1914-1986)

JACK W. PETERS
(1931-1993)

EMMET TINLEY
(1916-2002)

*ALSO ADMITTED IN NEBRASKA

December 4, 2007

VIA E-MAIL

Ron Hopp, Director
City of Council Bluffs Public Parks
Recreation and Public Property Department
209 Pearl Street
Council Bluffs, Iowa 51503

VIA E-MAIL

Richard Wade
Council Bluffs City Attorney
209 Pearl Street
Council Bluffs, Iowa 51503

Re: Riverside Grille

Dear Ron and Dick:

I have prepared an Extension and Addendum to Agreement for Restaurant/Bar Concessionaire Services which is attached.

I have not attached the exhibits referred to in the Extension and Addendum. While I have a fully executed copy of the original Agreement, I do not have a fully executed copy of the Addendum. I trust that you folks can provide that.

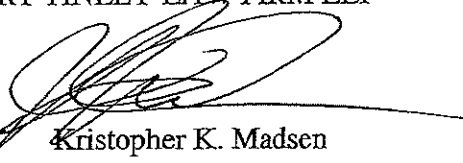
In talking with Ward and Kelly, they expressed significant reservations about revisiting the issue of an appropriate contract percentage after two years. Mike Massman has indicated to them that the only way they can pay off the debt is if the percentage rate stays at 2.5%. Still, they will agree to revisiting this issue, with the understanding that the percentage rate could also go lower. Also, they want to make sure that the Concessionaire Agreement at the Sports Complex is locked in at 10% for four years. This appears the only way that they can hope to pay off the debt that has been incurred.

If you have any questions, or there are changes, please let me know.

Sincerely yours,

STUART TINLEY LAW FIRM LLP

By

A handwritten signature in black ink, appearing to read 'Kristopher K. Madsen', written over a horizontal line.

Kristopher K. Madsen

Direct email: madsen.kristopher@stuarttinley.com

KKM:jm

Copy to:

VIA E-MAIL

Kelly Prine

223 Park Avenue

Council Bluffs, Iowa 51503

VIA E-MAIL

Ward Prine

113 Greenview Circle

Council Bluffs, Iowa 51503

**EXTENSION AND ADDENDUM TO AGREEMENT
FOR RESTAURANT/BAR CONCESSIONAIRE SERVICES**

WHEREAS, the City of Council Bluffs and Prine, L.L.C. previously entered into an Agreement for Restaurant/Bar Concessionaire Services, and an Addendum to said Agreement (see copy of Agreement attached hereto and marked as Exhibit A and copy of Addendum attached hereto and marked as Exhibit B); and

WHEREAS, the parties now desire to extend and modify said Agreement and Addendum. The following is now agreed to by and between the parties:

1. The Agreement for Restaurant/Bar Concessionaire Services shall be extended for four years commencing January 1, 2008 and continuing through December 31, 2011.
2. Paragraph 9 of the original Agreement is amended to reflect that Prine, L.L.C. shall pay to the City, as a contract fee, a percentage of all gross receipts from any activities under this Agreement in the amount of 2.5%, effective January 1, 2008, through December 31, 2009. After December 31, 2009, Prine, L.L.C. and the City agree to revisit the issue of what an appropriate contract percentage is, and if necessary due to inequities, amend the contract percentage for the remaining two years of this Agreement, which Agreement will conclude on December 31, 2011.
3. Prine, L.L.C. acknowledges that there is currently owed to the City as of December 4, 2007, the sum of \$62,504.14, which sum reflects the percentage of the gross receipts due, under the Addendum to Agreement previously entered. In addition, Prine, L.L.C. acknowledges that the City will be owed the percentage of the gross receipts for the months of November and December of 2007, and that the figure for these months is not yet known.
4. Prine, L.L.C. agrees to reimburse the City \$62,504.14, plus the percentage of the gross receipts due for the months of November and December of 2007, in four annual payments of 25% of the total debt owed. The first payment will be due on or before December 31, 2008; the second payment will be due on or before December 31, 2009; the third payment will be due on or before December 31, 2010; the final payment will be due on or before December 31, 2011.

Prine, L.L.C. and the City acknowledge that all other terms of the original Agreement and Addendum will remain in place.

Dated this _____ day of _____, 2007.

Thomas P. Hanafan, Mayor

PRINE, L.L.C.

**CONCESSION AGREEMENT
FOR
COUNCIL BLUFFS RECREATION COMPLEX**

This agreement, made and entered into this _____ day of _____, 2007, by and between the City of Council Bluffs, Iowa, acting through the Parks, Recreation and Public Property Department, hereinafter called the "City", whose address for the purpose of this lease is 209 Pearl Street, Council Bluffs, Iowa, and _____ Prine, LLC, hereinafter called the "Concessionaire", whose address for the purpose of this agreement is _____ 2 Harrah's Blvd. _____.

WITNESSETH:

WHEREAS, the City is engaged in the operation and maintenance of the public facility called Council Bluffs Recreation Complex and the City desires to engage a competent and qualified concessionaire to operate and manage the concession stand at the facility; and

WHEREAS, the Concessionaire is desirous of procuring from the City the right to operate and manage the concession stand and is qualified to provide the requisite services associated therewith; and

WHEREAS, the public interest and welfare will be served and the Council Bluffs Recreation Complex will be materially enhanced by granting an agreement to a reputable party who will provide certain services to the public patronizing the complex.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements hereinafter set forth, it is agreed by and between the parties as follows:

1. **LENGTH OF AGREEMENT.** This agreement for the privilege and obligation to operate the concession rights at the Council Bluffs Recreation Complex shall be for the period from April 1, 2008, through November 1, 2011.

2. **PAYMENTS.** Concessionaire shall pay to the City, through the Parks, Recreation and Public Property Department, 10 percent of gross sales (excluding sales tax). Said fee shall be paid in monthly payments due by the 15th of the following month, beginning with the second month of operation.

3. **FINANCIAL STATEMENTS.** Concessionaire shall provide the City with a financial statement verifying all receipts from the operation of its business with each monthly installment. In addition, Concessionaire shall make available to the City all its records regarding the operation of the business when so requested by the City.

4. **LICENSES.** Concessionaire shall obtain all licenses, permits, and other documents necessary to operate a food and beverage business, including beer sales, at its sole expense, as required by the laws of the City of Council Bluffs, State of Iowa, and the United States.

5. **RIGHT OF TERMINATION.** Either The City of Council Bluffs or the Concessionaire may terminate this Agreement, if either party breaches a material provision of the Agreement, or if the parties mutually agree to terminate the Agreement. If either party breaches a material provision of the Agreement, the non breaching party shall give the other party notice of such breach. If the breach is not remedied within ten (10) days, the non breaching party may give a thirty (30) days written notice of termination to the other party, notifying the party, that the Agreement will be terminated at that time.

6. **RENEWAL OF FRANCHISE.** This Concession Franchise Agreement may be renewed at the sole discretion of City, taking into consideration the best interests of City and the general public. If City does not intend to renew this agreement with Grantee, City shall notify Grantee in writing on or before November 15th, in the year the contract expires, subject however, to Paragraph Seven (7) of this agreement.

7. **ASSIGNMENT OF AGREEMENT.** Concessionaire shall not assign, sell, or in any way transfer the business or this agreement without the prior written consent of the Parks, Recreation and Public Property Director.

8. **PRODUCT SALES AND HOURS OF OPERATION.** It is the desire and intent of the City, and Concessionaire, to have the concession stand open and available to the public, during the hours that primarily coincide with the playing of all regularly scheduled or rescheduled league or tournament games. These hours shall be determined by the Concessionaire, with input from the City.

9. **SUSPENSION OR LOSS OF REQUIRED LICENSES.** In the event Grantee violates any law regarding the sale of food, beverages, including beer, and as a result thereof has its license suspended or taken away, City may cancel this Concession Franchise Agreement without notice.

10. **SALE PRICES OF PRODUCTS.** Prices for products sold to general public shall not exceed reasonable competitive prices. Grantee shall each April 15th, the period covered by this agreement, provide the City with a list of products and prices for said products.

11. **MACHINERY AND EQUIPMENT.** Concessionaire shall provide and maintain all machines and equipment necessary to operate its business at its sole expense. Structural changes to the building pertaining to equipment must be approved in writing by the Parks, Recreation and Public Property Director and done at Concessionaire's expense. When said equipment is removed, the building shall be restored to its original condition, at Concessionaire's expense. Storage shall be limited to the concession area and storage room.

12. **ELECTRICITY AND WATER.** City shall provide electricity and water to concession area for use by Concessionaire at City's sole expense.

13. **BUILDING MAINTENANCE.** City shall maintain concession building at its expense. However, Concessionaire shall be responsible for all damage done by employees of the Concessionaire. Concessionaire shall not alter the interior or exterior of the concession building without prior written consent of the City.

14. **SIGN(S).** Concessionaire, at his/her sole expense and with approval from the City, may erect suitable signs to inform the public of the products available for sale, and the prices. No signs will be hung on the outside of the concession building without approval from the Parks, Recreation and Public Property Director.

15. **HOUSEKEEPING.** Concessionaire shall be solely responsible for maintaining the concession business area and keeping the same in a clean and wholesome condition at all times. Concessionaire shall keep all garbage and refuse generated by his/her business neatly contained, including the concession area and the common area of the softball and soccer complexes. The City shall be responsible for cleaning the restroom facilities and collecting refuse.

16. **PERSONNEL IN CONCESSION AREA.** Only employees of the Concessionaire or authorized personnel shall be permitted in the concession portion of the building.

17. **REMOVAL OR ENCUMBRANCE OF CITY PROPERTY.** Concessionaire shall not remove or encumber any property or equipment of City located in the concession building; nor shall Concessionaire dispose of or disburse any funds owed to City.

18. **RIGHT OF ENTRY.** City shall have the right to enter and examine the concession area at any time.

19. **INSURANCE.** Concessionaire shall provide such insurance as required by the following insurance schedule.

Any policy of insurance or certificate of insurance required hereunder shall be with a carrier authorized to do business in Iowa and a carrier that has received a rating of A or better in the current Best's Rating Guide.

Any policy of insurance required hereunder shall provide for a thirty (30) day notice to the City of any material change or cancellation of the policy prior to its expiration date.

Concessionaire shall have its insurance agent or company certify in writing that any policy of insurance required herein with an aggregate limit of liability has not been reduced by paid or reserved claims at the time of issuance of policy or certificate.

Concessionaire shall furnish copies of the following policies to the City, with limits not less than the following, or greater if required by law, and shall also furnish certificates of insurance from all independent contractors or subcontractors hired by Concessionaire or any independent subcontractor, which certificates shall provide evidence of coverage for the following with limits not less than the following, or greater if required by law:

COMMERCIAL GENERAL LIABILITY:

General Aggregate Limit	\$2,000,000
Products-Completed Operation Aggregate Limit	2,000,000
Personal and Advertising Injury Limit	1,000,000
Each Occurrence Limit	1,000,000
Fire Damage Limit (any one occurrence)	50,000
Medical Payments	5,000

Coverage is to include: occurrence form, premises/operations/products/ completed operations coverage, independent contractors' coverage, contractual liability, broad form property damage, personal injury, City of Council Bluffs named as an additional insured with thirty (30) days' written notice of change or cancellation.

DRAM SHOP LIABILITY:

Bodily Injury	X
Property Damage	X
Loss of Means of Support	X
OR	
Combined Single Limit	\$1,000,000

City of Council Bluffs shall be listed as an additional named insured with a thirty (30) day written notice of cancellation.

To the extent that the Concessionaire's business is such as to place any or all of its employees under the coverage of Worker's Compensation or similar statutes, the Concessionaire shall provide at his own expense during the time the Concessionaire occupies the premises and throughout the term, Worker's Compensation or similar insurance affording the coverage and limits required by statute. The Concessionaire shall provide the City of Council Bluffs with evidence of such coverage.

20. **INDEMNIFICATION.** The Concessionaire agrees to defend, indemnify and hold harmless the City, its officers, boards, commissions, agents, and employees from and against all claims by any person whatsoever occasioned by the operation of Concessionaire under this Agreement.

21. **LIABILITY FOR CONCESSIONAIRE'S EQUIPMENT, SUPPLIES, AND OTHER PROPERTY.** City shall not be responsible in any way for lost, stolen, or damaged equipment, supplies, or other property of Concessionaire. The Concessionaire shall be solely responsible for all of its equipment and supplies.

22. **EMPLOYEES.** Concessionaire shall supply at its sole expense a sufficient number of employees to adequately serve the public during the hours of operation. Concessionaire's employees shall at all times reflect personal cleanliness. Unkempt and unclean employees will not be tolerated. Employees shall wear distinctive shirts, jackets, or smock and cap whenever working.

23. **TOTAL OR PARTIAL DESTRUCTION OF CONCESSION BUILDING.** In the event of fire or other disaster causing partial or total destruction of the concession building, the City at its option may proceed with rebuilding or repair of the building. During the period of rebuilding, Concessionaire shall have the option of continuing to operate its business from a temporary or mobile concession stand.

FOR THE CITY OF COUNCIL BLUFFS

FOR THE CONCESSIONAIRE

Address

Phone

RESOLUTION NO. 07-458

A RESOLUTION authorizing the Mayor to enter into an extension and addendum to the agreement with Prine, L.L.C., for concessionaire services for the Dodge Riverside Golf Club and an agreement with Prine, L.L.C., to provide concessionaire services for the Council Bluffs Recreation Complex.

WHEREAS, On September 24, 2001, the City Council approved a contract with Prine, L.L.C., to provide concessionaire services at the Dodge Riverside Golf Club; and

WHEREAS, the contract was for a term of six years, ending on December 31, 2007; and

WHEREAS, it would be in the best interests of the City of Council Bluffs to enter into an extension and addendum to the agreement with Prine, L.L.C.

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA:

That the Mayor is hereby authorized to execute the agreements with Prine, L.L.C., to provide concessionaire services for the Dodge Riverside Golf Club and the Council Bluffs Recreation Complex

ADOPTED

AND

APPROVED January 14, 2008

THOMAS P. HANAFAN

Mayor

Attest:

JUDITH RIDGELEY

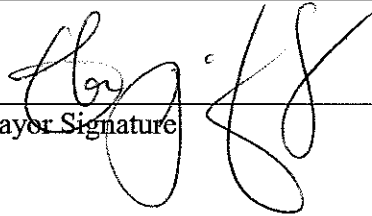
City Clerk

Council Communication

Department:	Ordinance No. Resolution No. <u>07-459</u>	Date: <u>January 14, 2008</u>
Case/Project No.		
Applicant.		
Subject/Title		
A RESOLUTION authorizing the Mayor to execute an Agreement with the Historical General Dodge House, Inc. and the Historic General Dodge House Foundation, Inc.		
Background/Discussion		
The City currently makes a \$70,000 annual appropriation to the Dodge House to assist in the restoration, preservation and operation of the property. An agreement has been prepared to make the annual appropriation to the Foundation rather than Dodge House. Additional information is contained in a letter from Jack Ruesch, a member of both boards.		
Recommendation		
Authorize the Mayor to enter the agreement between the City, Historical General Dodge House, Inc. and the Historic General Dodge House Foundation, Inc.		

Submitted by: Dick Wade, City Attorney

Mayor Signature



December 3, 2007

Richard Wade
City Attorney
City Hall
209 Pearl Street
Council Bluffs, IA 51503

RE: *Dodge House/Dodge Foundation/City Agreement*

Dear Dick:

In the past year, the Historic General Dodge House Foundation, Inc. has been organized. It intends to solicit funds from the public in order to provide an endowment for the Dodge House and to provide funds for various special projects at the house. Both the Foundation and the Historic General Dodge House, Inc. are deemed to be public charities pursuant to Internal Revenue Code Section 501(c)(3). As you know, the Historic General Dodge House, Inc. is charged with maintaining and operating the property. The Dodge House itself is owned by the City of Council Bluffs. In its capacity as owner, the City has made an annual appropriation to the Historic General Dodge House, Inc. for many years. The annual appropriation is currently \$70,000.00.

Both The Dodge House Board of Directors and The Dodge House Foundation Board of Directors believe it would be appropriate if the annual appropriation was directed to the Foundation, rather than to The Historic General Dodge House, Inc. In turn, the foundation agrees that it should make a grant each year to The Historic General Dodge House, Inc. to be used specifically for operating expenses.

The foregoing is set forth in an Agreement, which I am enclosing. This Agreement has been approved by both The Historic General Dodge House Foundation, Inc. and The Historical General Dodge House, Inc. We would appreciate it if this Agreement could also be submitted to the City Council for its consideration and approval.

Please let me know if you have any other questions. I will plan on attending the study session to answer any questions.

Sincerely,

Jack E. Ruesch
jruesch@telpnerlaw.com

AGREEMENT

This agreement is made by and between the City of Council Bluffs, Iowa (City) and the Historical General Dodge House, Inc. (Dodge House) and the Historic General Dodge House Foundation, Inc. (Foundation) as follows:

1. The City owns the Historic General Grenville M. Dodge House located at 605 3rd Street in Council Bluffs, and also the adjacent Historic Beresheim House. The General Dodge House is designated as a National Historic Landmark.
2. Dodge House is an Iowa Non-Profit Corporation, qualified under Section 501(c)3 of the United States Internal Revenue Code.. Its primary purposes are to assist the City in the restoration, preservation and operation of the General Dodge House. Dodge House is responsible for the day-to-day operations of the property.
3. In order to assist Dodge House in fulfilling its purposes, the City makes an annual appropriation to Dodge House. Currently the annual appropriation is in the amount of \$70,000.00.
4. Foundation is an Iowa Non-Profit Corporation which is also qualified as a public charity within the meaning of §501(c)3 of the United States Internal Revenue Code. The stated purpose of the Foundation is to preserve the Historic General Dodge House and to extend its legacy into the 21st Century through educational, cultural and historical mediums that promote community pride and attract tourism. The Foundation intends to seek grants and donations to fulfill its purposes.
5. The parties hereto agree that it would be appropriate and consistent with the objectives of the parties if the City would make the annual appropriation to Foundation rather than Dodge House.
6. In consideration for this agreement, Foundation agrees to make a grant each year to Dodge House to be used specifically for operating expenses. The parties agree that it is not otherwise the intention of Foundation to subsidize the regular operating expenses of Dodge House.

Dated: _____

City of Council Bluffs, Iowa

By: _____
Thomas P. Hanafan, Mayor

Dated: _____

Historic General Dodge House, Inc.

By: _____
Kim McKeown, President

Dated: _____

Historic General Dodge House
Foundation, Inc.

By: _____
Kate Cutler, President

RESOLUTION NO. 07-459

A RESOLUTION authorizing the Mayor to execute an Agreement with the Historical General Dodge House, Inc. and the Historic General Dodge House Foundation, Inc.

WHEREAS, the City owns the Historic General Grenville M. Dodge House located at 605 3rd Street and the adjacent Historic Beresheim House; and

WHEREAS, to assist with the restoration, preservation and operation of the General Dodge House, the City currently makes an annual appropriation to the Historical General Dodge House, Inc.; and

WHEREAS, it would be appropriate and consistent with the objectives of the parties if the City would make the annual appropriation to the Foundation rather than the Dodge House;

WHEREAS, the Foundation agrees to make a yearly grant to the Dodge House to be used specifically for operating expenses.

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA:

That the Mayor is hereby authorized to execute an agreement with the Historical General Dodge House, Inc. and the Historic General Dodge House Foundation, Inc. to make the annual appropriation to the Foundation rather than the Dodge House.

ADOPTED

AND

APPROVED January 14, 2008

THOMAS P. HANAFAN

Mayor

Attest:

JUDITH RIDGELEY

City Clerk

Council Communication

Department: Community Development Case No. PC-07-010 Applicant: Cutchall Property Management LLC 14353 Q St. Omaha, NE 68137 Engineer: Schemmer 1044 No. 115 St., Suite 300 Omaha, NE 68154	Resolution No. <u>08-05</u>	City Council: 1-14-08 Planning Commission: 12-11-07
Subject/Title Adopt the Planned Commercial Development Plan for Lot 4, Bluffs Vision Subdivision Replat 1 to construct a restaurant west of South 29 th Street between 23 rd and 24 th Avenues.		
Background/Discussion Cutchall Property Management LLC is requesting review and approval of a planned commercial development plan for Lot 4, Bluffs Vision Subdivision Replat 1 which is a 1.5 acre lot located on the south side of 23rd Avenue at South 29 th Street. The applicant intends to build a 4,928 square foot restaurant with associated parking, sidewalks and landscaping. Development plans are subject to review and recommendation by the Planning Commission and final approval by the City Council. Location, site layout, building elevations, signage, landscape and utility plans are provided for your review. <ol style="list-style-type: none">1. The subject property and the adjacent surrounding property are zoned Planned Commercial. This area is also within the RO/Recreation-Tourism Overlay District. The current zoning is consistent with the proposed use2. City Council Resolution No. 02-227 approved the final plat for Bluffs Vision Subdivision Replat 1 on August 26, 2002. Sewer, water and other utilities are available and can be extended with adequate capacity to serve the proposed use. The water main extension required with the replat in 2002 was not completed by the property owner. However, service from a 12" water line in South 29th Street is adequate to serve this lot. The water main extension is required to serve the remaining two vacant lots to the west. A water service line sized to serve domestic, irrigation and fire suppression needs must be connected to the main by a licensed plumber. Installation of a private hydrant will be as required by the Fire Marshal. All fees, including tap, capital facility costs and construction will be paid by contractor or developer.3. Storm and sanitary sewer systems were designed for the entire area around the Mid America Center. Storm water is collected on-site through inlets in the parking lot and discharged into the public system along the north curb of 24th Ave. at the predevelopment rate. Public Works will review the final construction drawing to assure that the slopes in the parking lot drain properly. Those drawings also need to show references to existing utility locations. Sanitary sewer is available in 23rd Avenue right-of-way,4. The building entrance faces South 29th Street with patio seating along the south. The trash enclosure is connected to the west side of the building with the same exterior treatment as the building. The building is set back 15' from the 23rd Avenue property line. It has a metal roof with wood siding. Enhancements are needed to the exterior in the form of masonry, brick or stucco finish, particularly along the 23rd Avenue and 24th Avenue elevations. They intend to install several fake palm trees at the entrance.5. One additional large deciduous tree is needed along the west property line to buffer the blank west wall.6. There are 101 parking stalls shown. The number of spaces exceeds the minimum required in the Zoning Ordinance. The parking lot layout is consistent with City standards.		

7. A 5' wide sidewalk with pedestrian drops is shown on the site plan (Sheet C.03). The width and thickness of the sidewalks, must meet the City's commercial standards. The pedestrian drops must be consistent with the drops already installed in the area around the Mid-America Center.
8. The sidewalk location at the corner of 23rd Avenue and South 29th conflicts with the traffic signal. Public Works recommends moving the sidewalk south and west of the pole and dedicating the additional right-of-way to accommodate the sidewalk.
9. Three options were presented for the monument sign shown along 23rd Avenue. The preferred option is 10' long and 5'7" high (56 square feet per face). Attached signage is requested for the parapet wall on the north, south and east elevations. Each 48 square foot sign is 3' high and 16' long. The Hooters 'owl' is incorporated into the sign on the east elevation.

Recommendation

The Community Development Department recommends approval of the planned commercial development plan for Lot 4, Bluffs Vision Subdivision Replat 1 with the following notes and exceptions:

1. Construction plans and comprehensive plans for grading, drainage and erosion control, including right-of-way during site preparation, utility installation and construction shall be submitted to the Public Works Department for review and approval prior to beginning any earth disturbing activity. All applicable permits necessary to meet local state and federal requirements shall be the developer's responsibility.
2. Commercial sidewalks with pedestrian drops meeting City design standards and consistent with standards in the area around the Mid-America Center, shall be completed along the 23rd and 24th Avenues and South 29th Street frontages prior to issuance of a Certificate of Occupancy. Sidewalk shall be realigned at the corner of 23rd Avenue and South 29th Street to eliminate the conflict with traffic signal. Land needed for that purpose shall be dedicated to the City as right-of-way, prior to issuance of the Certificate of Occupancy.
3. All utilities shall be installed underground. The developer shall maintain all clearances from existing electric facilities and pay all costs associated with extending or relocating any facilities. Based upon the route determined by MidAmerican Energy, the developer shall install a conduit system and provide the appropriate easements for the underground installation.
4. Arrangements shall be completed with the Council Bluffs Water Works for appropriately sized and designed water supply system, with a private hydrant as needed, to comply with the Water Works standards and the fire safety codes.
5. Entrance to the outdoor service area shall only be from the inside of the building to comply with liquor licensing requirements.
- ~~6. Brick, stone masonry, stucco exterior finishes, precast concrete or architectural CMU block shall be incorporated into the building's exterior, around the east entry area and the north and south elevations. The wood siding on a minimum of 30% of the building exterior, excluding the area above the roof and the west elevation shall be modified to include any combination of the material listed above.~~
7. The landscape plan, as shown is approved with the following comments:
 - a. All planted areas shall be included in a site irrigation system.
 - b. One additional large deciduous tree shall be planted along the west side of the property.
 - c. Landscaping with the irrigation system, consistent with the approved plan shall be in place prior to issuance of the Certificate of Occupancy for the building.
8. Signage, as shown is approved with the following comments:
 - a. The monument sign shall be 10' by 5' 7½" as shown in the attachment.
 - b. Signage shall comply with all applicable city, state and federal regulations. The applicant or an authorized agent shall obtain all necessary sign permits. Banners are not permitted.
9. Outside storage is not permitted.

Public Hearing

Brian Leaders, The Schemmer Associates, 1044 North 115th Street, Suite 300, Omaha, NE 68154 and John Jerkovich, Heartland Properties appeared before the Planning Commission in favor of the request. No one appeared before the Planning Commission in opposition.

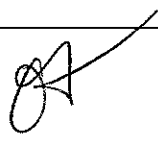
Planning Commission Recommendation

The Planning Commission recommends approval of the Planned Commercial Development Plan for Lot 4, Bluffs Vision Subdivision, Replat 1 as shown on Attachment 'A' subject to the conditions presented by the Community Development Department, with the deletion of item #6, relative to the additional exterior finish requirements. (See letter dated 12-9-07 from Hooter's of America regarding design standards.)

VOTE: AYE 8 NAY 1 ABSTAIN 0 ABSENT 1 VACANT 1 Motion: carried.

Attachment: Attachment 'A'

Prepared by: Gayle Malmquist, Development Services Coordinator



RESOLUTION NO. 08-05

A RESOLUTION to adopt a Planned Commercial Development Plan for Lot 4, Bluffs Vision Subdivision Replat 1, to construct a restaurant west of South 29th Street between 23rd and 24th Avenues.

WHEREAS, Cutchall Property Management LLC is requesting review and approval of a Planned Commercial Development Plan for Lot 4, Bluffs Vision Subdivision Replat 1, which is a 1.5 acre lot located on the south side of 23rd Avenue at South 29th Street; and

WHEREAS, the applicant intends to build a 4,928 square foot restaurant with associated parking, sidewalks and landscaping; and

WHEREAS, the subject property and the adjacent surrounding property are zoned Planned Commercial, and are within the RO/Recreation-Tourism Overlay District. The current zoning is consistent with the proposed use; and

WHEREAS, the Community Development Department recommends approval of the Planned Commercial Development Plan for Lot 4, Bluffs Vision Subdivision Replat 1, with the following notes and exceptions:

1. Construction plans and comprehensive plans for grading, drainage and erosion control, including right-of-way during site preparation, utility installation and construction shall be submitted to the Public Works Department for review and approval prior to beginning any earth disturbing activity. All applicable permits necessary to meet local, state and federal requirements shall be the developer's responsibility.
2. Commercial sidewalks with pedestrian drops meeting City design standards and consistent with standards in the area around the Mid-America Center shall be completed along the 23rd and 24th Avenues and South 29th Street frontages prior to issuance of a Certificate of Occupancy. Sidewalk shall be realigned at the corner of 23rd Avenue and South 29th Street to eliminate the conflict with traffic signal. Land needed for that purpose shall be dedicated to the City as right-of-way prior to issuance of the Certificate of Occupancy.
3. All utilities shall be installed underground. The developer shall maintain all clearances from existing electric facilities and pay all costs associated with extending or relocating any facilities. Based upon the route determined by MidAmerican Energy, the developer shall install a conduit system and provide the appropriate easements for the underground installation.
4. Arrangements shall be completed with the Council Bluffs Water Works for appropriately sized and designed water supply system, with a private hydrant as needed, to comply with the Water Works Standards and the fire safety codes.
5. Entrance to the outdoor service area shall only be from the inside of the building to comply with liquor licensing requirements.
6. The landscape plan, as shown, is approved with the following comments:

- a. All planted areas shall be included in a site irrigation system.
 - b. One additional large deciduous tree shall be planted along the west side of the property.
 - c. Landscaping with the irrigation system, consistent with the approved plan shall be in place prior to issuance of the Certificate of Occupancy for the building.
7. Signage, as shown, is approved with the following comments:
 - a. A monument sign shall be 10' by 5' 7 1/2", as shown in the attachment.
 - b. Signage shall comply with all applicable city, state and federal regulations. The applicant or an authorized agent shall obtain all necessary sign permits. Banners are not permitted.
8. Outside storage is not permitted; and

WHEREAS, the Planning Commission concurs with the Community Development Department recommendation.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

That the Planned Commercial Development Plan for Lot 4, Bluffs Vision Subdivision Replat 1 to construct a restaurant west of South 29th Street between 23rd and 24th Avenues is hereby approved, subject to the conditions set forth above.

ADOPTED
AND
APPROVED

January 14, 2008

THOMAS P. HANAFAN

Mayor

Attest:

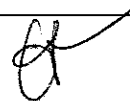
JUDITH RIDGELEY

City Clerk

Council Communication

Department: Community Development Case/Project No. N/A	Ordinance No. <u>N/A</u> Resolution No. <u>08-05</u>	Council Action 1/14/08
Subject/Title		
Acquisition of property in the 100 block of South 34 th Street from M E K Enterprises, LLC		
Background/Discussion		
<p>A 2.27 acre parcel used as a mobile home park in the 100 block of South 34th Street is listed for sale. This property is located immediately north of 1st Avenue and East of South 34th Street. The property is also located in the West Broadway Urban Renewal Area. Although past urban renewal efforts have focused on commercial redevelopment in the corridor, the urban renewal plan also identifies the acquisition of properties along 1st Avenue for redevelopment. Acquisition of these properties is recommended for several reasons which include:</p> <ul style="list-style-type: none">• To remove obsolescent and blighted properties;• To begin assembling contiguous parcels along 1st Avenue which can be redeveloped upon the remove of the railroad spur; and• Cause the redevelopment of the parcel and to add to the tax base of the community. The current taxable value of the property is \$117,400. <p>The properties to be acquired include a 2.27 acre parcel owned by M E K Enterprises, LLC which operates a mobile home park on the site. The acquisition would include obtaining the titles to the personal property on site. The acquisition price is recommended at \$425,000. Staff proposes to use \$75,000 in allocated CIP funds for acquisition and \$100,000 for demolition. The balance of \$350,000 would be finance over a two year period and repaid using west Broadway TIF account funds.</p>		
Recommendation		
Approval of resolution authorizing the acquisition of property in the 100 block of South 34 th Street owned by M E K Enterprises, LLC.		

Submitted by: Donald D. Gross, Director, Community Development Department
Approved by: Donald D. Gross, Director, Community Development Department



7 E

Find Property Res Sales Com DOVs

7544 34 101 001 000 035 270 009875 000 000
 --- Permanent Property Address --- Mailing Address -----
 M E K ENTERPRISES LLC M E K ENTERPRISES LLC
 16236 WESTERN AVE
 OMAHA NE 68118

Assr Info:

District: 000 Urban Renewal: 00003 Tax Sale: Current Gross Tax: 5058.12

===== BILLING SUMMARY =====
 more Taxable ----- First ----- ----- Second -----
 Year Dist Value Tax Due Charges Payment Posted Payment Posted Balan
 2004 000 117400.00 4992.00 0.00 2496.00 09/21/2005 2496.00 03/20/2006 0.
 2005 000 116403.00 4992.00 0.00 2496.00 09/25/2006 2496.00 03/20/2007 0.
 2006 000 117400.00 5058.00 0.00 0.00 0.00 5058.

===== LEGAL DESCRIPTION =====
 FERRY ADDITION LTS 1 THRU 5 BLK 5 & VAC ALLEY ADJ LT 4 & LTS 1 THRU 6 BLK 6 BRYANT
 & CLARKS ADD & 29.5' VAC ALLEY ADJ ON N & W33' VAC ALLEY ADJ LT1

===== ASSESSED VALUE =====
 land: \$74200 dwelling: \$0 building: \$43200 total: \$117400 year/class: 2004/C
 land: \$74200 dwelling: \$0 building: \$43200 total: \$117400 year/class: 2005/C
 land: \$74200 dwelling: \$0 building: \$43200 total: \$117400 year/class: 2006/C
 land: \$74200 dwelling: \$0 building: \$43200 total: \$117400 year/class: 2007/C

===== OWNERS =====
 1 D M E K ENTERPRISES LLC book/page: 105/20338 D H/S eligible:
 ===== EXEMPTIONS & CREDITS =====

===== ASSESSMENT DATA =====
 PDF: 08 MAP: 17-8 PLAT: 213 RES BLDGS: 0 COM BLDGS: 1 AG BLDGS: 0 YARD EXTRAS: 0

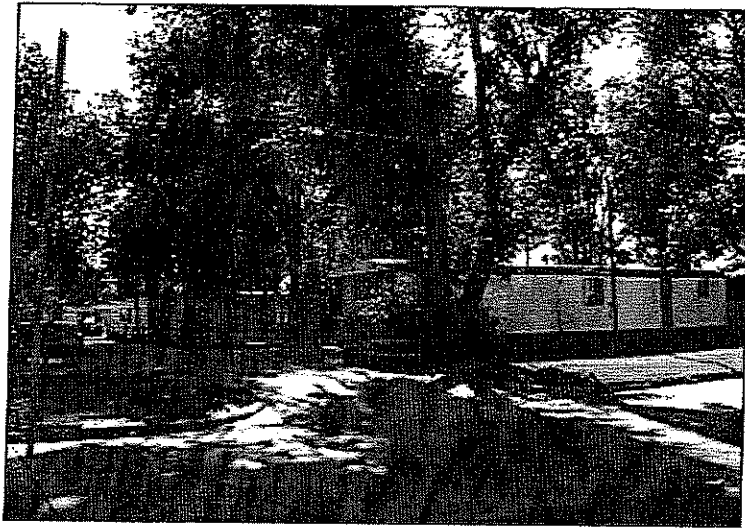
Sale Date	Amount	Code	Book/Page
04/28/2005	0	D001	105/20338
03/01/1999	115000	D000	099/48202
09/24/1991	0	D001	092/09594
08/27/1991	85000	D022	092/09596
06/12/1989	156000	C049	089/25570

Entry: Inspected Date Inspected: 6/1/1994 List/Review: KDK/TCG

LAND.....98918 sqFt 2.27 acres

Commercial Building 1 of 1 -- Manufactured Home Park (703)
 STRUCTURE.....0 story 0 base SF 0 bsmt SF 0 gross SF
 Year Built: 1979 Eff Year: 1979 Condition: OBSV

VERTICALS....Ext Wall: Incl. w/ Base
 Int Wall: Unfinished
 Wall Face: Incl. w/ Walls
 Front/Doors: Incl. w/ Base
 HORIZONTALS..Basement: Incl. w/ Base
 Roof: Incl. w/ Base
 Ceiling: Unfinished
 Partitions: Incl. w/ Base
 Framing: Incl. w/ Base
 HVAC: No HVAC
 Lighting: No Electric



M E K ENTERPRISES LLC, 000035270009875000000c 09/10/1996

[Zoom Out](#) [Zoom In](#)



600ft x 600ft

[Click any parcel to go to its web page](#)

RESOLUTION NO. 08-06

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A REAL ESTATE CONTRACT TO ACQUIRE A 2.27 ACRE PARCEL IN THE 100 BLOCK OF SOUTH 34TH STREET OWNED BY M E K ENTERPRISES LLC AS PART OF THE WEST BROADWAY URBAN RENEWAL AREA PROJECT.

WHEREAS, the City has established the West Broadway Urban Renewal Area which consists of a 44 block area between 1st Avenue and Avenue B from 14th Street to I-29; and

WHEREAS, M E K Enterprises, LLC, owns a 2.27 acre parcel used a mobile home park in the 100 block of South 24th Street as depicted in Exhibit "A"; and

WHEREAS the City desires to acquire deteriorated and obsolescent properties and to further cause redevelopment within said area; and

WHEREAS the property is for sale by owner and can be acquired on an voluntary basis; and

WHEREAS Gaming funds and future West Broadway TIF account funds are available to acquire and demolish the property; and

WHEREAS, a real estate contract has been prepared for the acquisition in the amount of \$425,000.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

That the Mayor is hereby authorized and directed to execute the real estate contract to acquire a 2.27 acre parcel in the 100 block of South 34th Street owned by M E K Enterprises, LLC.

ADOPTED

AND

APPROVED: January 14, 2008

Thomas P. Hanafan

Mayor

ATTEST: _____

Judith H. Ridgeley

City Clerk

COUNCIL COMMUNICATION

Department: Public Works
Case/Project No.: FY08-02C-3
Applicant

Ordinance No.
Resolution No. 08-07

Council Action January 14, 2008

SUBJECT/TITLE

Council consideration of a resolution accepting the bid of Insituform Technologies USA, Inc. in the amount of \$43,000 for the 1st Stage Trickling Filter No. 2 - 42" Influent Pipe Lining.

BACKGROUND/DISCUSSION

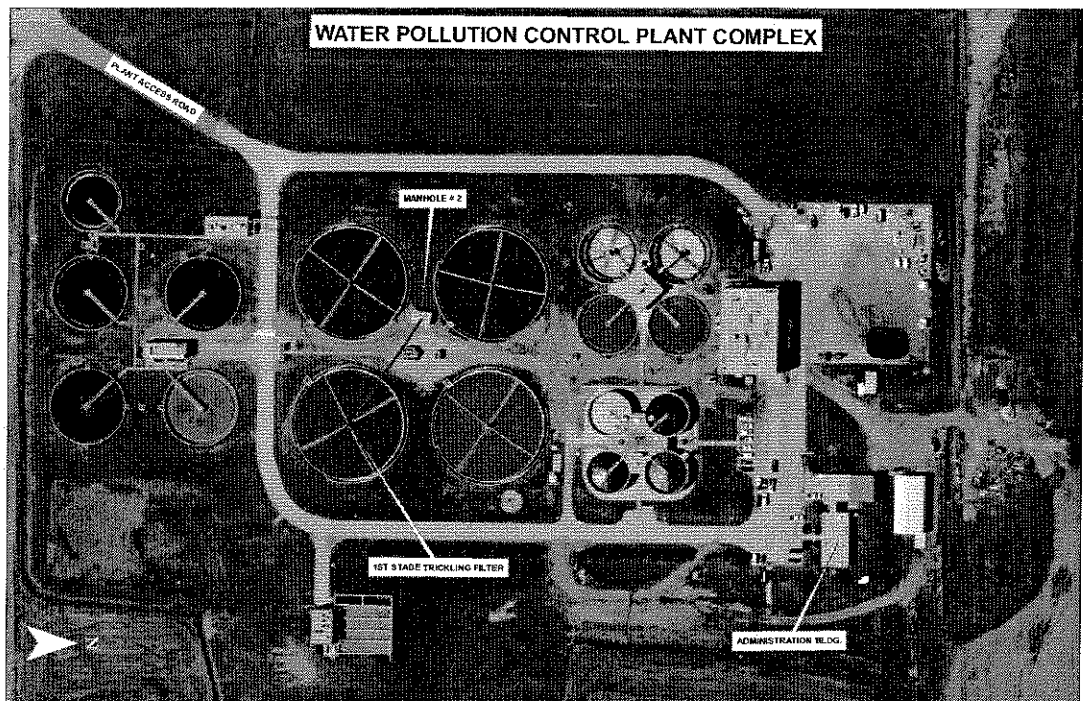
- On December 20, 2007, one bid was received in the office of the city clerk as follows:

Insituform Technologies USA, Inc., Chesterfield, MO	\$43,000.00
Engineer's Opinion	\$40,000.00

- The Water Pollution Control Plant (WPCP) was constructed in 1972 and has been in constant service since that date.
- The WPCP consists of several components such as basins, clarifiers, trickling filters, digesters and pump stations that are interconnected by piping such that the wastewater from the City flows through the facility receiving primary and secondary treatment for removal of organic and non-organic solids prior to discharge to the Missouri River.
- The wastewater contains dissolved gases which are released within the piping network. These gases are corrosive and in the case of piping which does not normally flow full, the top of the piping is corroded away with time.
- The influent piping from Manhole No. 2 to first stage trickling filter No. 2 does not flow full. As a result the top of the pipe is subjected to severe corrosion from hydrogen sulfide gas which converts to sulfuric acid. In early October, 2007, the top of the pipe just inside the trickling filter collapsed and considerable inflow is blowing out at that location.
- The project was designed in house for the installation of a cured in place pipe liner which will return the pipe to its full structural strength and prevent collapse and disruption of the treatment process.
- Without the project the pipe could totally collapse resulting in interruption of the treatment process and possible violation of the City's NPDES WPCP permit.
- Completion of all work prior to May 1, 2008.
- This project is FY08-02C-3 in the CIP which is for plant repairs. This project will be funded with WPCP maintenance and operations funds.

RECOMMENDATION

Approval of the resolution accepting the bid of Insituform Technologies USA, Inc. in the amount of \$43,000 for the 1st Stage Trickling Filter No. 2 - 42" Influent Pipe Lining.



Greg Reeder

Greg Reeder, Public Works Director/City Engineer

Thomas P. Hanahan

The Honorable Thomas P. Hanahan, Mayor

RESOLUTION
NO. 08-07

**RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK
TO EXECUTE AN AGREEMENT WITH
INSITUFORM TECHNOLOGIES USA, INC. FOR THE
1ST STAGE TRICKLING FILTER NO. 2 – 42” INFLUENT PIPE LINING
FY08-02C-3**

- WHEREAS, the plans, specifications, and form of contract for the
1st Stage Trickling Filter No. 2-42” Influent Pipe Lining
are on file in the office of the City Clerk; and
- WHEREAS, a Notice of Public Hearing was published, as required
by law, and a public hearing was held on November 19, 2007,
and the plans, specifications and form of contract were
approved; and
- WHEREAS, Insituform Technologies USA, Inc. has submitted a low bid in the
amount of \$43,000 for this contract.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

That the bid of Insituform Technologies USA, Inc. in the amount of \$43,000 is hereby accepted as the
lowest and best bid received for said work; and

BE IT FURTHER RESOLVED

That the City Council does hereby award the contract in connection with the 1st Stage Trickling Filter No.
2-42” Influent Pipe Lining; and

BE IT FURTHER RESOLVED

That the Mayor and City Clerk are hereby authorized, empowered, and directed to execute an agreement
with Insituform Technologies USA, Inc. for and on behalf of the City of Council Bluffs, upon approval by
the City Attorney of the certificate of insurance and payment and performance bonds as required by the
contract specifications.

ADOPTED
AND
APPROVED January 14, 2008

Thomas P. Hanafan, Mayor

ATTEST:

Judith Ridgeley, City Clerk

COUNCIL COMMUNICATION

Department: Public Works
Case/Project No.: FY09-05C
Applicant

Ordinance No.
Resolution No.

First Reading January 14, 2008

SUBJECT/TITLE

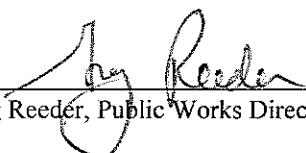
Council consideration of a resolution authorizing the Mayor to execute the Council Bluffs Water Works Main Extension Agreement for a water main extension on 10th Avenue in connection with the Public Works Fleet Maintenance Facility.

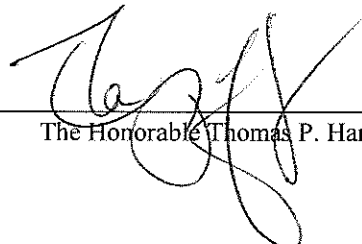
BACKGROUND/DISCUSSION

- The city is proposing to construct a new fleet maintenance facility on 10th Avenue near 9th Street. This location is a part of the city owned property which extends from 8th Street to 12th Street between 11th Avenue and 10th Avenue. The site has been masterplanned for the eventual relocation of all public work facilities to this location.
- There is no water main in 10th Avenue between 8th Street and 10th Street. To adequately serve the proposed Public Works facility a water main extension is required.
- In accordance with Council Bluffs Water Works policy main extensions are the financial responsibility of the customer. This responsibility is documented in a main extension agreement.
- The cost of the water main extension for 10th Avenue is estimated at \$67,000. The city is responsible for the actual cost of the improvements.
- The 10th Avenue water main extension will be included in the 10th Avenue Storm Sewer Improvements, project FY09-05C in the CIP. The construction is scheduled for Spring, 2008.

RECOMMENDATION

Approval of the resolution authorizing the Mayor to execute the Council Bluffs Water Works Main Extension Agreement for a water main extension on 10th Avenue in connection with the Public Works Fleet Maintenance Facility.


Greg Reeder, Public Works Director/City Engineer


The Honorable Thomas P. Hanafan, Mayor



Council Bluffs Water Works

COUNCIL BLUFFS, IOWA — 51501

Office

2000 NORTH 25TH STREET

Mailing Address

P.O. BOX No. 309 — 51502

Board of Trustees:

MARK A. GENEREUX, *Chairman*

CARL L. HEINRICH

GLEN M. MITCHELL

MARTIN L. BROOKS

MAUREEN R. KRUSE

General Manager & Secretary of Board

DOUGLAS P. DRUMMEY

December 31, 2007

Mr. Greg Reeder, Director
Public Works Department
City Hall
209 Pearl Street
Council Bluffs, IA 51503

Re: Public Works Facility 10th Avenue Water Main Extension

Dear Mr. Reeder:

Enclosed are two original Main Extension Agreements to serve the above referenced facility.

Following City Council's approval, please have the Mayor and the City Clerk sign both Main Extension Agreements in the space provided on page 6 and notarized on page 7.

THE DATE OF THE MAIN EXTENSION AGREEMENT SHOWN ON PAGE 1 OF THE AGREEMENT SHOULD BE LEFT BLANK. Please let the City Clerk know of this requirement. The date of the Agreement will be filled in when the Board representatives sign the document. Please return all documents to me. A fully executed copy of the documents will be sent to you for your files.

If you have any questions please give me a call at 328-1006 ext. 1030.

Sincerely,

Douglas P. Drummey
General Manager

Enclosures (2)

RESOLUTION

NO. 08-08

**RESOLUTION APPROVING THE
COUNCIL BLUFFS WATER WORKS
WATER MAIN EXTENSION AGREEMENT
FOR A WATER MAIN EXTENSION ON 10TH AVENUE
IN CONNECTION WITH THE
PUBLIC WORKS FLEET MAINTENANCE FACILITY
FY09-05C**

WHEREAS, the city wishes to make improvements known as the water main extension on 10th Avenue in connection with the Public Works Fleet Maintenance Facility, within the city, as therein described; and

WHEREAS, Council Bluffs Water Works has submitted an agreement for the work necessary for said improvements; and

WHEREAS, the city council deems approval of said agreement to be in the best interest of the City of Council Bluffs.

**NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

That the Mayor and City Clerk are hereby authorized and directed to execute an agreement with Council Bluffs Water Works for a water main extension on 10th Avenue in connection with the Public Works Fleet Maintenance Facility.

ADOPTED

AND

APPROVED January 14, 2008

Thomas P. Hanafan, Mayor

ATTEST:

Judith Ridgeley, City Clerk

COUNCIL BLUFFS CITY WATER WORKS
COUNCIL BLUFFS, IOWA
MAIN EXTENSION AGREEMENT

This AGREEMENT made and entered into this ____ day of _____, 2008 by and between the Board of Water Works Trustees of the City of Council Bluffs, Iowa, 2000 North 25th Street, Council Bluffs, Iowa ("Board") and the City of Council Bluffs, Iowa, 209 Pearl Street, Council Bluffs, Iowa 51503 ("Applicant").

RECITALS

This Agreement is made with reference to the following facts and circumstances.

- A. Applicant is developing a site within Council Bluffs, Iowa, for a new Public Works Facility (the "Project").
- B. The Applicant requires a water main be located so as to provide domestic service and fire protection.
- C. The parties are in agreement that in order to install the required water main it will be necessary to install approximately 765 linear feet of 8-inch ductile iron pipe together with all necessary fire hydrants and necessary appurtenances (said fire hydrants and appurtenances being collectively the "Appurtenances") within the public rights-of-way in the street in the Project, said street being currently identified as 10th Avenue, between South 8th Street and South 10th Street. The new main on 10th Avenue will extend from the Board's existing 8-inch water main located within the public rights-of-way at the intersection of 10th Avenue and 8th Street. All of said installations shall be in compliance with Applicant's requirements and the Board approved engineering design and locations required to enable Applicant, its grantees or assigns to provide potable water to its subdivision and to obtain necessary building permits from the Applicant.

AGREEMENT

In consideration of the foregoing recitals which are incorporated into and are made a part of this Agreement, and in further consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree, subject to the terms and conditions hereinafter set

forth, as follows:

1. To enable Applicant to develop the proposed Project, the Board, in consideration of the agreement of Applicant to the terms and conditions hereinafter provided, agrees that at such time as Applicant:
 - a. completes the grading and paving of the proposed public rights-of-way located in the Project free of all encumbrances of any kind or nature; and
 - b. completes construction of the sanitary and storm sewer system and certifies the soil density testing results of this construction;

the Board shall, commensurate with existing weather conditions and prudent construction practices during the 2008 construction season, construct, install and operate an 8-inch ductile iron pipe water main with all Appurtenances within the public rights-of-way of the Project in order to provide domestic water service and fire protection in the Project. All of such water main so constructed and Appurtenances thereto are hereinafter called "The Work".

2. Applicant agrees:
 - a. To pay to the Board all of the Cost of The Work (defined below).
 - b. Sixty-seven Thousand Dollars (\$67,000.00) is the sum representing the Board's opinion as to Applicant's share of the probable total Cost of The Work based on current available pricing information. Nonetheless, it is specifically understood by Applicant that the actual total Cost of The Work may be a sum greater or lesser than said sum.
 - c. After completion and acceptance of The Work by the Board, and before any water service connections may be made by any person or entity to The Work, Applicant shall pay to the Board all sums required in order to fully reimburse the Board for Applicant's share of the Cost of The Work.
3. IT IS MUTUALLY AGREED THAT:
 - a. The "Cost of The Work" shall include all expenses required to be paid by the

Board in order to complete The Work including, but not limited to, all costs and expenses for labor, materials, machines and equipment and contractors' charges, all legal fees and expenses, engineering design, construction and surveying fees and expenses, and the cost of all tests, permits and licenses required for the performance of The Work, periodic inspection to insure compliance with the plans and specifications of the Board, and any other expenses incurred by the Board in negotiating and performing this and all other contracts and documents required for this proposed water main extension project.

- b. No extra work shall be added to The Work after the letting of the contract by the Board or commencement of construction of The Work by the Board, whichever is applicable, without Applicant's prior written consent, which consent shall not be unreasonably withheld. If Applicant so consents to such extra work the Applicant will pay the Board such additional funds. Applicant shall be liable to the Board for all expenses incurred by the Board in enforcing this Agreement, including reasonable attorney fees and expenses, and for all special and general damages and any punitive damages that may be awarded the Board against Applicant by a court or jury for Applicant's breach of this Agreement.
- c. HGM Associates Inc., Council Bluffs, Iowa shall be the Board's engineers for The Work. The Board and its engineers are using surveys, plans, drawings and other design documents furnished the Board by Applicant for the routing, location and design of the water main extension. The Board and its engineers are wholly reliant upon the Applicant as to the accuracy and completeness of the information provided by Applicant and its engineer and surveyor and assume no liability, stated or implied, for any errors or omissions resulting from the use of the documents provided. While reasonable care and diligence will be exercised in determining the location of buried utilities, soil conditions and depth of water table prior to letting of construction contracts, unforeseen conditions may arise that require a contract change order for extra work and a cost increase. Notwithstanding any provision in this Agreement to the contrary, it is agreed that the Applicant's engineer shall be responsible for the construction staking required for the Project in accordance with the plans and specifications.

- d. The Board intends to construct The Work using Water Works staff.
 - e. The Work and all additions thereto and replacements thereof, as and when installed, shall be and shall remain the property of and under the exclusive control and jurisdiction of the Board and its assigns and the Board shall have the right to extend said main beyond or laterally without further consent of Applicant and without becoming liable to Applicant for any refunds.
 - f. Applicant, as well as any others desiring water service to be furnished by the Board from and through The Work, shall make application to the Board for the necessary tap permit and shall pay the then existing tap fee and other charges assessed by the Board for providing such water service, none of which shall be refundable to Applicant. Thereafter, the Board agrees to furnish water service to such customers so long as they timely pay for such service at the rates and charges applicable thereto and are in full compliance with all other rules and regulations of the Board pertaining to the providing of water service to its customers.
- 4. Applicant, its successors in interest and assigns shall be jointly and severally liable for all payments required to be paid to the Board and performance of all obligations of Applicant under the terms and conditions of this Agreement.
 - 5. This Agreement shall not be sold, transferred or assigned by Applicant without written consent of the Board, which consent shall not be unreasonably withheld. Except as above provided, this Agreement shall be binding on and inure to the benefit of the parties, their successors in interest and assigns, the same as if they were original parties signing this Agreement.
 - 6. This Agreement shall become effective only when duly signed and acknowledged by all parties of this Agreement.
 - 7. This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of Iowa applicable to contracts made and performed in Iowa.
 - 8. Words and phrases herein, including acknowledgements endorsed hereon shall be

construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

9. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter hereof.
10. This Agreement and any amendments, waivers, consents, supplements may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same agreement. Delivery of an executed counterpart of this Agreement by telecopy or similar electronic medium shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telecopy or similar electronic medium shall also deliver a manually executed counterpart of this Agreement; provided that the failure to deliver a manually executed counterpart shall not affect the validity, enforceability or binding effect of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties have signed this Agreement and affixed any seals required by their respective entities on the dates set opposite their respective signatures.

Board Of Water Works Trustees Of The City Of
Council Bluffs, Iowa

Date Signed: _____

By: _____

Mark A. Genereux, Chairman

Date Signed: _____

By: _____

Douglas P. Drummey, Secretary

City of Council Bluffs, Iowa

Date Signed: _____

By: _____

Thomas P. Hanafan, Mayor

Date Signed: _____

By: _____

Judith Ridgeley, City Clerk

On this ____ day of _____, 2008, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Mark A. Genereux and Douglas P. Drummey to me personally known, and who, being by me duly sworn, did say that they are the Chairman and Secretary respectively, of the Board of Water Works Trustees of the City of Council Bluffs, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed and sealed on behalf of the Board of Water Works Trustees of the City of Council Bluffs, Iowa, by authority of said Board, as contained Resolution Number, 07-03-07 adopted and passed by said Board on the 18th day of September, 2007, and that Mark A. Genereux and Douglas P. Drummey acknowledge the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of said Board, by it voluntarily executed.

STATE OF IOWA)
) ss
COUNTY OF POTTAWATTAMIE)

On this _____ day of _____, 2008, before me, a Notary Public in and for said county, personally appeared Thomas P. Hanafan and Judith Ridgeley, to me personally known, who being by me duly sworn did say that they are the Mayor and City Clerk respectively of the City of Council Bluffs, Iowa; that the instrument was signed and sealed on behalf of the City of Council Bluffs by authority of the City Council of the City of Council Bluffs, as contained in Resolution Number _____ adopted and passed by the City Council on the _____ day of _____, 2008, and that Thomas P. Hanafan and Judith Ridgeley acknowledged the execution of said instrument to be the voluntary act and deed of said City Council, by it voluntarily executed.

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COUNCIL COMMUNICATION

Department: Public Works
Case/Project No.: FY06-08D
Applicant _____

Ordinance No. _____
Resolution No. 08-09

Council Action: January 14, 2008

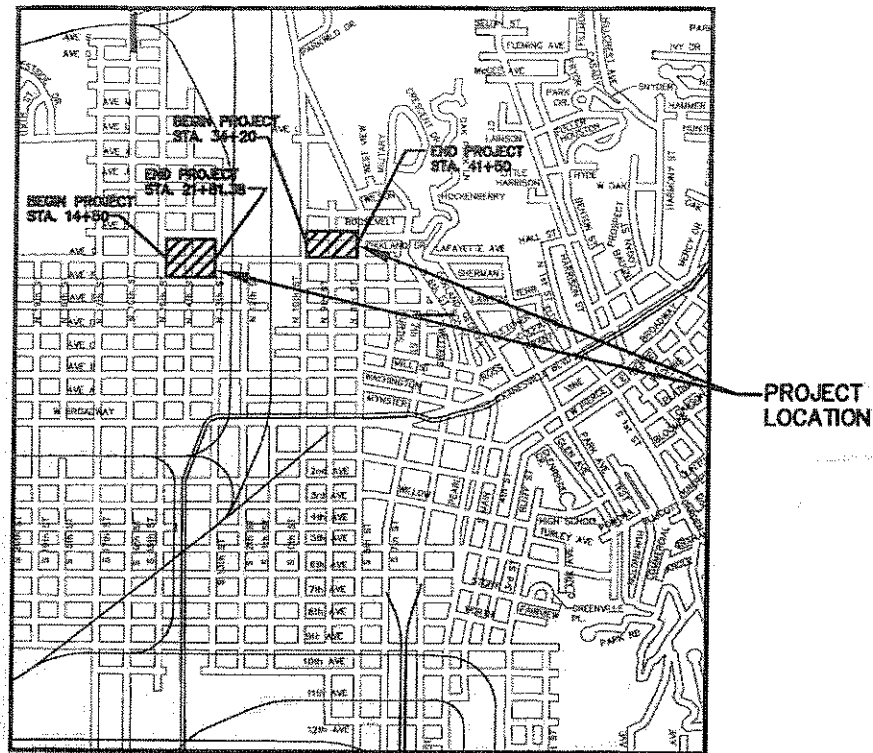
SUBJECT/TITLE

Council consideration of a resolution accepting the work of Peterson Contractors, Inc., as complete and authorizing release of the retainage immediately following council action on January 14, 2008 for the Avenue G Viaduct/Corridor – Project III.

BACKGROUND/DISCUSSION

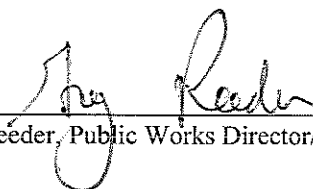
- This project constructed the embankments for the viaduct approaches and the associated two stage retaining walls.
- This was project FY06-08D in the CIP and was be funded by a combination of local sales tax and general obligation bonds and federal grant funds.
- Future Projects include Project 4: Viaduct construction; Project 5 Roadway.
- | | |
|--------------------------|----------------|
| Original contract amount | \$2,072,010.59 |
| Change Orders | (\$ 13,287.08) |
| Final contract amount | \$2,058,723.51 |
| Less previous payments | \$2,030,377.85 |
| Retainage due contractor | \$ 28,345.66 |

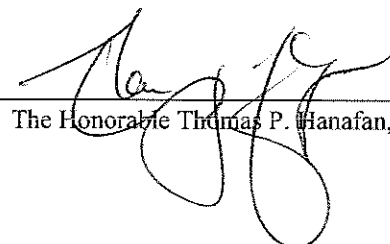
LOCATION MAP



RECOMMENDATION

Approval of the resolution accepting the work of Peterson Contractors, Inc., as complete and authorizing release of the retainage immediately following the council action on January 14, 2008 in connection with the Avenue G Viaduct/Corridor – Project III.


 Greg Reeder, Public Works Director/City Engineer


 The Honorable Thomas P. Hanafan, Mayor

RESOLUTION
NO. 08-09

**RESOLUTION ACCEPTING THE WORK OF
PETERSON CONTRACTORS, INC., IN CONNECTION WITH
THE AVENUE G VIADUCT/CORRIDOR – PROJECT III
FY06-08D
AND AUTHORIZING THE FINANCE DIRECTOR TO ISSUE
A CITY CHECK IN THE AMOUNT OF \$28,345.66**

- WHEREAS, the City of Council Bluffs, Iowa, entered into an agreement with Peterson Contractors, Inc. Reinbeck, IA, for the Avenue G Viaduct/Corridor-Project III; and
- WHEREAS, said contractor has fully completed the construction of said improvements in accordance with the terms and conditions of said contract and plans and specifications filed with the City clerk; and
- WHEREAS, a request for final payment in the amount of \$28,345.66 to Peterson Contractors, Inc., has submitted to the city council for approval and payment; and
- WHEREAS, final payment is due immediately following acceptance of the work; and
- WHEREAS, the city council of the City of Council Bluffs has been advised and does believe that said \$28,345.66 constitutes a valid obligation of the City and should in its best interest be paid.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

That said report of the engineer is hereby approved and adopted, and said improvements are hereby accepted as having been fully completed in accordance with said plans and specifications.

AND BE IT FURTHER RESOLVED

That the Interim Finance Director is hereby authorized and directed to issue a city check in the amount of \$28,345.66 payable to Peterson Contractors, Inc., from budget code Z02200-676375 Project #00097.

ADOPTED
AND
APPROVED January 14, 2008

Thomas P. Hanafan, Mayor

ATTEST:

Judith Ridgeley, City Clerk

COUNCIL COMMUNICATION

Department: Public Works
Case/Project No.: FY07-08B
Applicant _____

Ordinance No. _____
Resolution No. _____

First Reading January 14, 2008

SUBJECT/TITLE

Council consideration of a resolution authorizing the Mayor to execute the Memorandum Of Understanding among FHWA, IDOT, Pottawattamie County and City of Council Bluffs in connection with the Environmental Impact Statement for the East Beltway Project.

BACKGROUND/DISCUSSION

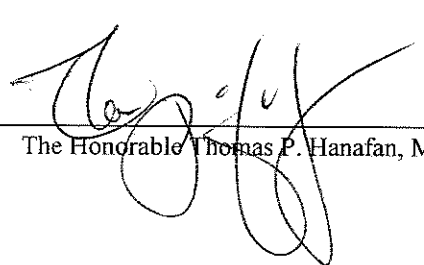
- With the use of federal funds (\$13.7 million secured to date) for the East Beltway Project come the requirement to follow the National Environmental Policy Act of 1969 (NEPA) and to prepare an Environmental Impact Statement (EIS).
- Federal highway bill Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETRA-LU) requires that an "environmental review process" be followed for a project that requires an EIS.
- The memorandum of understanding (MOU) establishes a framework of confidence and trust for the project lead agencies in the environmental review process.
- The MOU obligates the parties to cooperate, coordinate and consultate.

RECOMMENDATION

Approval of the resolution authorizing the Mayor to execute the Memorandum Of Understanding among FHWA, IDOT, Pottawattamie County and City of Council Bluffs in connection with the Environmental Impact Statement for the East Beltway Project.



Greg Reeder, Public Works Director/City Engineer



The Honorable Thomas P. Hanafan, Mayor

RESOLUTION
NO. 08-10

**RESOLUTION APPROVING THE
MEMORANDUM OF UNDERSTANDING
AMONG FHWA, IDOT, POTTAWATTAMIE COUNTY AND
THE CITY OF COUNCIL BLUFFS
IN CONNECTION WITH THE
ENVIRONMENTAL IMPACT STATEMENT
FOR THE
EAST BELTWAY PROJECT
FY07-08B**

WHEREAS, the city wishes to make improvements known as the East Beltway Project within the city, as therein described; and

WHEREAS, the Federal Highway Administration has submitted an Memorandum of Understanding among the FHWA, IDOT, Pottawattamie County and City of Council Bluffs in connection With the Environmental Impact Statement; and

WHEREAS, the city council deems approval of said agreement to be in the best interest of the City of Council Bluffs.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

That the Mayor and City Council approve the Memorandum of Understanding among FHWA, IDOT, Pottawattamie County, and City of Council Bluffs for the Environmental Impact Statement for the East Beltway Project.

ADOPTED

AND

APPROVED January 14, 2008

Thomas P. Hanafan, Mayor

ATTEST:

Judith Ridgeley, City Clerk

MEMORANDUM OF UNDERSTANDING
among
Federal Highway Administration Iowa Division,
City of Council Bluffs, Iowa
Pottawattamie County, Iowa
and the
Iowa Department of Transportation

**Roles and responsibilities as Joint Lead Agencies in the Environmental Review
Process in the preparation of an Environmental Impact Statement (EIS)
for the
East Beltway Project in Council Bluffs, Pottawattamie County, Iowa.**

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), made and entered into this
day of _____, by and among the FEDERAL
HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF
TRANSPORTATION ("FHWA"), City of Council Bluffs, Iowa, acting by and through
its Department of Public Works ("City"), Pottawattamie County, Iowa acting by and
through its Board of Supervisors ("County"), and the STATE of Iowa, acting by and
through its DEPARTMENT OF TRANSPORTATION ("State"), hereby provides as
follows:

WITNESSETH:

Whereas, Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation
Equity Act: A Legacy for Users (P.L. 109-059) (SAFETEA-LU), codified as Section 139
of amended Chapter 1 of title 23, United States Code (23 U.S.C. 139) requires that an
"environmental review process" be followed for a project that requires an environmental
impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4331
et.seq.) (NEPA); and

Whereas, a Federal Register notice of intent (NOI) to prepare an environmental impact
statement has been published on November 5, 2007 for the proposed transportation
improvements in Pottawattamie County ("the project"); and

Whereas, FHWA as the Department of Transportation agency, will serve as the Federal
lead agency in the environmental review process for this project; and

Whereas, the City of Council Bluffs and Pottawattamie County, have been invited to
serve as joint lead agencies with FHWA in the environmental review process for this
project and have agreed to serve in that role; and

Whereas, the State as a project sponsor and the entity receiving funds under Title 23,
will serve as a joint lead agency with FHWA in the environmental review process and
will prepare the environmental impact statement for this project in accordance with the
requirements of NEPA and 23 U.S.C 139; and

Whereas, it is the mutual desire of FHWA, the City of Council Bluffs, Pottawattamie County, and the State to effectively and efficiently meet the intent of NEPA and 23 U.S.C 139 through implementation of the environmental review process for this project; to work in harmony for the common purpose of protecting the public health, safety, and welfare of the people of the City of Council Bluffs, Pottawattamie County, and Iowa; and to improve relationships among the parties; and

Now, therefore, the FHWA, the City of Council Bluffs, Pottawattamie County, and the State agree as follows:

STIPULATIONS

I. PURPOSES AND OBJECTIVES

- A. This MOU is intended to build confidence and trust between the parties in order to improve communication.
- B. The parties mutually agree this MOU is intended to encourage coordination and consultation between one another regarding environment review process matters.
- C. The parties mutually agree an objective of this MOU is to identify and seek to remove any impediments and barriers hindering the ability to work directly and effectively with one another.
- D. The parties mutually agree that this MOU is intended to broadly define the roles and responsibilities for each of the parties. The parties agree that the project coordination plan will contain more specific and detailed project responsibilities for the parties that are consistent with the terms of this MOU.

II. ROLES AND RESPONSIBILITIES OF THE JOINT LEAD AGENCIES

- A. The use of the joint lead agency concept for transportation projects is intended to facilitate decision-making and expedite the environmental review process. To that end, each of the parties will identify an individual as a point of contact who will serve as the representative of that party in project meetings and other activities. That individual will be responsible for carrying out the purposes and objectives of the joint lead agency in the environmental review process.
 - 1. The Division Director of the party is designated as the point of contact until a notice from that party identifies an alternate individual.
 - 2. A Notice that identifies a different point of contact for a party and the effective date for the change may be provided at any time.
- B. As articulated in FHWA guidance on implementation of 23 U.S.C. 139, each of the joint lead agencies is empowered to participate equally in project decision-making. The decision-making process among joint lead

agencies is collaborative and requires the joint lead agencies to reach mutual agreement on issues. Subject to requirements otherwise imposed by applicable law, the joint lead agencies may determine the scope of their participation in project decision-making and other project activities. The parties agree that, while the project coordination plan may further define the scope of participation by each joint lead agency, the following items will require mutual agreement before they may be finalized:

1. Defining the list of participating agencies
 2. Defining the Project Management Team (PMT)
 3. The environmental review process coordination plan and schedule
 4. Defining the project purpose and need
 5. Defining the range of alternatives for this project
 6. Defining methodologies to be used and the level of detail required in the analysis of each alternative
 7. A preferred alternative and whether the preferred alternative may be developed to a higher level of detail than other alternatives in order to facilitate the development of mitigation measures or concurrent compliance with other applicable laws
- C. Each of the parties agrees to attend meetings, review documentation, consider information about this project, and to render its decisions in a timely manner. In doing so, each of the parties is committed to collaborate and to work cooperatively with one another to reach decisions as specified in Stipulation II (B).
1. The manner by which information will be distributed and meetings scheduled will be identified in the project coordination plan.
 2. Consultants employed by the City of Council Bluffs may facilitate record keeping, the distribution of information, scheduling and implementation of meetings, and may assist the parties in meeting their commitments under this MOU.
- D. The joint lead agencies will document their decisions and the reasons, therefore, on major project issues, including those listed in Stipulation II (B). The project coordination plan may address record-keeping responsibilities in detail. However, each of the parties agrees that for the items in Stipulation II (B), it will provide a written position statement on the item in question, including comments explaining its views. If the position statements indicate that the parties are in agreement on the item, then the decision will be treated as final. If the parties disagree on a material aspect, then they will resolve their disagreement by following the process outlined in Stipulation II (E).
1. The timing of requests for position statements will be identified in the coordination plan's schedule.
 2. The requests and the responses may be by letter or by email.
 3. The response will be made within 30 days of receipt of information necessary to reach a decision on an item in Stipulation II (B), provided the submission includes a request for a position statement and that the request is sent to all parties.

4. If a party needs a period longer than 30 days to develop a position statement, then within 30 days of its receipt of the project information that party will specify the time period required.
- E. The parties recognize their obligation to collaborate and to achieve mutual agreement on items in Stipulation II (B). The parties also recognize that it is necessary to resolve issues of mutual concern and maintain accountability consistent with this MOU. In furtherance of this obligation, the parties agree that:
1. The FHWA point of contact shall be accountable to the Iowa Division Administrator. The Pottawattamie County point of contact shall be accountable to the Pottawattamie County Board of Supervisors. The City of Council Bluffs point of contact shall be accountable to the Council Bluffs City Council. The Iowa Department of Transportation (IDOT) point of contact shall be accountable to their supervisors and division directors within IDOT and the State Transportation Commission.
 2. In the event that the parties' position statements under Stipulation II (D) show that they do not agree on an issue in Stipulation II (B), then within 14 days after the submission of the position statements the parties will hold a joint meeting or conference call to resolve the issue in a mutually acceptable manner. If that consultation effort does not resolve the disagreement, then the parties will refer the issue to the Division Administrator, the IDOT, the Pottawattamie County Board of Supervisors, and the Council Bluffs City Council. Those officials will then make a decision concerning the issue. Any of those officials may convene a joint issue resolution meeting of the joint lead agencies. Those officials, or their authorized designee, will attend the meeting. The meeting may be held in person, or electronically. Until the issue is resolved among the joint lead agencies, no project activity may proceed that depends on the decision concerning the item in question.
 3. Where a disagreement initially occurs as described in Stipulation II (D), the parties will prepare and approve a final decision document that reflects the outcome of their issue resolution process and the reasons for their ultimate decision on the item in question.
- F. Each of the parties agree to provide assistance with the coordination of participating agencies and the public, in order to effectively and efficiently communicate information about this project, and to identify and resolve concerns. The project coordination plan will address the scope of each party's responsibilities for particular activities. In general, the parties agree that:
1. FHWA will commit their staff as well as draw upon resources of expertise at a national level by inviting the participation of the Program Office in Washington, D.C., in the management and successful completion of the environmental review process.

2. The City of Council Bluffs commits their staff and consultants to the management and execution of coordination with participating agencies and the public.
3. Pottawattamie County commits their staff and consultants to the management and execution of coordination with participating agencies and the public.
4. The State commits their staff and consultants to the management and execution of coordination with participating agencies and the public.

III. TERM AND TERMINATION OF THIS AGREEMENT

- A. This agreement will remain in force until a date one (1) year after the date of a Record of Decision (ROD) issued by FHWA.
- B. The City of Council Bluffs or Pottawattamie County may terminate its joint agency status at any time, as follows:
 1. The City of Council Bluffs or Pottawattamie County will provide to the other parties a written notice of intent to terminate its joint lead agency status. The notice should explain the reason(s) for the proposed termination.
 2. Following the termination notice of intent, the parties shall have a 30-day period during which the FHWA, City of Council Bluffs, Pottawattamie County, and the State shall consult on amendments or other actions that would avoid termination. By agreement, the parties may extend this consultation period, provided that such extension may not exceed the term of the MOU.
 3. Following the consultation period, if the City of Council Bluffs or Pottawattamie County still wishes to terminate its joint lead agency status, then it may so notify the other parties and the termination shall be effective as of a date thirty (30) days after the end of the consultation period described in the previous paragraph.
 4. Upon termination of joint lead agency status by the City of Council Bluffs, Pottawattamie County, the FHWA and the State will invite the terminated agency to serve as a participating agency, should the Iowa DOT determine it is in the public's interest to complete the remainder of the environmental review process for the project.

Execution of this MOU formally evidences that the parties have reviewed this MOU and determined that it complies with the laws, regulations and policies applicable to the Federal Highway Administration (FHWA), the City of Council Bluffs, Pottawattamie County, and the State. This MOU is approved and is effective upon the date of the last signature below.

FEDERAL HIGHWAY ADMINISTRATION

Phillip Barnes
Division Administrator

Date

CITY OF COUNCIL BLUFFS

Thomas P. Hanafan, Mayor
City of Council Bluffs

Date

POTTAWATTAMIE COUNTY

Delbert King, Chair
Pottawattamie Board of Supervisors
Pottawattamie County, Iowa

Date

STATE OF IOWA

James P. Rost
Director, Office of Location and Environment

Date